IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

COCP No.332 of 1990
Date of decision: December 21, 2006.

Col. Rajbir Singh Khanna

...**Petitioner(s)**

v.

Sardul Singh Brar

...**Respondent(s)**

Present: Shri Salil Sagar, Advocate for the petitioner.

None for the respondent.

Surya Kant, J. (Oral)

This order shall dispose of COCP Nos.332 and 368 of 1990.

These contempt petitions have been filed, *inter-alia*, alleging that the respondent has willfully and deliberately breached the undertaking given by him before this Court in Civil Revision No.3300 of 1989 as also C.M. No.14750-II of 1990 moved therein.

The facts may be noticed.

The respondent was a tenant under the petitioner and pursuant to an ejectment petition filed by the petitioner, an eviction order was passed against him by the Rent Controller on 26.9.1989/ The respondent preferred an appeal which was also dismissed by the Appellate Authority. He, thereafter, approached this court by way of Civil Revision No.3300 of 1989 which too was dismissed on 22.12.1989. However, upon an undertaking given by the respondent that he will vacate the premises by 1st March, 1990,

he was permitted to retain the possession till that day.

Thereafter, the respondent moved C.M. No.1750-II of 1990 for extension of time. His application was accepted and having regard to the fact that he had school going children, this court permitted him to retain the premises till 1.5.1990, however, upon two conditions, viz., he shall clear all the arrears of rent within one month and after expiry of the extended period, he will hand over the vacant possession of the premises to the petitioner-landlord or his attorney by 1.5.1990.

The record reveals that the respondent appears to have breached both the undertakings. Firstly, he failed to deliver the possession in time and the cheque No. NR 490941 for a sum of Rs.5100/- of Punjab National Bank given to the petitioner in order to clear the arrears of rent, was also dishonoured by the Bank. This led the petitioner to initiate these contempt proceedings.

In these proceedings also, the respondent evaded the service, therefore, his presence was secured through bailable and non-bailable warrants. It was thereafter only that he filed his reply- affidavit in which it is claimed that he had vacated the premises before 1.5.1990. It is also stated by him that the cheque was issued with a clear intimation to the petitioner that the same should be presented to the Bank on 30.4.1990 so that the respondent could, by that time, arrange the payment. It is also averred that a sum of Rs.5100/- was deposited by him in his bank account on 28.4.1990. However, the cheque was dishonoured as the petitioner, instead of waiting for the due date, presented the same prior to 28.4.1990.

This petition was admitted for final disposal and has thereafter been taken up for hearing after a period of about 12-13 years.

Undoubtedly, Learned Counsel for the petitioner has made out a *prima-facie* case of willful and deliberate breach of the undertaking given by the respondent before this court. However, the long intervening period dissuades this court to proceed further in the matter. The present status of the petitioner or of the respondent and/or their family circumstances are not known. The possession of the premises having been restored to the petitioner, though at a belated stage, it is quite possible that the petitioner has also reconciled with the situation.

As far as the non payment of arrears of rent is concerned, undoubtedly, the respondent was obligated to pay the same. His failure to pay, does entitle the petitioner to recover the same.

Consequently, this petition is disposed of with a direction that if the respondent has not cleared the arrears of rent so far, the petitioner shall be entitled to recover the same by way of execution proceedings and in that event the respondent shall also be liable to pay cost of Rs.10,000/- to the petitioner.

Both these contempt petitions are accordingly disposed of.

Rule discharged.

Copy of the order be given *dasti* on payment of usual charges.

December 21, 2006. [**Surya Kant**]
kadyan **Judge**